MOTION FILED

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(3)

No. 84-150

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

WISCONSIN ELECTIONS BOARD, et al.,

Appellants

v.

THE REPUBLICAN PARTY OF WISCONSIN,et al.

Appellees

ON APPEAL FROM A THREE-JUDGE COURT
SITTING IN THE UNITED STATES
DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
UNDER 28 U.S.C. 2284(a)

MOTION TO PROCEED AS INTERVENORS

REX R. REED &
DEBORAH L. REED
Husband and Wife
Affected Parties
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August, 1984

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and

LEAGUE OF WOMEN VOTERS,

Intervening Party.

MOTION TO PROCEED AS INTERVENORS

This motion to intervene is made on two grounds: 1) The lower court's decision to deny our motion to intervene in their court and instead accept our

brief as an amicus submission was an abuse of discetionary authority; 2) the Supreme Court's June 7, 1984, stay has placed the Appellees in the position of arguing against their own political self interests.

As that is unlikely, no one will be left to defend the interests of Wisconsin's citizens. The League of Women Voters can take positions only after commit tees are appointed to study all questions raised by this issue followed by membership agreement. As a result, their timely input is not guaranteed.

We ask this court to reverse the three-judge panel in its denial of our motion to intervene. This denial was without explanation. This denial came even though the court eventually decided our senate district will be denied their constitutional right to elect

its senator.

In light of the fact that the lower court found that we have a constitutionally protected right to elect our senator and this right has been temporarily stayed by this court, it is necessary to allow us to intervene so that we may protect our and our fellow voters rights.

QUESTIONS PRESENTED

The constitutional questions presented are whether the 83 reapportionment plan is in violation of the Equal Protection Clause of the Fourteenth Amendment given the fact that the '83 plan was not necessary to establish a constitionally acceptable legislative reapportionment plan and is in violation of Art. IV (sec. 3 & 5) of the Wisconsin constitution.

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CONTITUTIONAL PROVISIONS INVOLVED:

> No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fourteenth Amendment, United States Constitution.

> At its first session after each enumeration by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly....

Wis. Const. art. IV, sec. 3.

> The senators shall be elected by single districts of convenient contiguous territory, at the same time and in the same manner as members of the assembly are required to be chosen....The senate districts shall be numbered in the regular series, and the senators shall be chosen alternately from the odd and even-numbered districts. The senators elected or holding over at the time of the adoption of this amendment shall continue in office till their successors are duly elected and qualified; and after the adoption of this amendment all senators shall be chosen for the term of four years.

Wis. Const. art. IV, sec. 5.

STATEMENT OF THE CASE

In 1981, the Democratically-controlled legislature and the Republican governor deadlocked over reapportionment. As a reult, a three-judge court sitting in the federal district court for the Eastern District of Wisconsin was compelled to apportion the state legislature after allowing the legislature and governor as much time as possible to settle their differences.

The 1982 election returned a Democratically controlled legislature and a Democratic governor. A new legislative apportionment was passed in 1983.

On August 18, 1983, the plaintiffs-appellees filed a supplemental complaint with the three-judge district court, and on May 25, 1984, the court ruled in favor of the plaintiffs by enjoining the further use of the 83 plan on the grounds

that the act unconstitutionally and unnecessarily disenfranchised over 173,000 state citizens.

The appellants moved for a stay but were denied by the three-judge court. The appellants filed a notice of appeal with this court on May 30, 1984. On June 7, 1984, this court entered a stay of mandate of the three-judge court pending timely docketing and ultimate disposition of the appeal.

ARGUMENT

The Lower Court's Ruling Was Correct.

The lower court correctly noted that the '83 plan unconstitutionally and unnecessarily disenfranchised 173,976 citizens of Wisconsin and violated the Wisconsin consitution.

Wisconsin's senators serve for a four-year term. Also, the state constitution staggers senate terms, so that half of the state senate comes up

for election at a time. As a result, the first election after reapportionment, many residents are denied the right to vote for their senator. For example, the '83 plan will prohibit 145,026 residents from participating in senate elections, and even more unfortunate, the '83 plan will make this upcoming fall election the second time in a row that 28,950 residents will be denied their right to vote for state senator.

The lower court's Decision and Order of May 25, 1984, properly observes that the federal constitution would allow the voter disenfrachisement inherent in the '83 plan only if such a plan was "absolutely necessary" or "unavoidable" in order to implement:

> a new plan that is passed to correct a constitutionally defective districting system.

What the Appellants have failed to

prove as a necessary element of their appeal is that the legislative apportionment that existed before the '83 plan was unconstitutional. Instead, they claim an unsupported right to "fine tune" an existing constitutional plan for unexplained reasons.

As a result, unless the appellants can prove that the apportionment in existence before the '83 plan was unconstituional, they should accept the ruling of the three-judge panel.

A. Reapportionment is a legislative function to be conducted within the confines of constitutional safeguards.

The constitution institutes apportionments in order to protect the value of a citizens vote. Likewise, legislatures as creations of constitutions are subject to the same duties as the consitutions that create them; therefore, they, too, have the

responsibility of protecting the right to vote. As a result of that responsibility, they cannot "fine tune" apportionments at the expense of the very people they are to protect without an articulate and defendable purpose.

The mere existance of a stated purpose is not sufficient cause to believe the legislature has met its responsibility; it must also meet the test of law.

In this case, the appellants have failed to show that the implementation of the '83 plan was an "absolute necessity" or "unavoidable" as required by constitutional law.

B. The three-judge court decision struck down the '83 legislative apportionment in order to protect the voter.

Because the appellants failed to explain the reasons for implementing the '83 apportionment and why that

apportionment was "absolutely necessary" or "unavoidable", the court had no alternative but to protect the rights of over 173,000 citizens to participate in senate elections.

Although apportionment is a legislative function, it is a legislative function only so long as they respect their constitutional responsibilities. If the legislature fails to respect its responsibilities to protect the citizens right to vote, the same constitution provides a safeguard of judicial review. In this case, the three-judge panel is not usurping legislative authority but preforming their judicial responsibilities. In having done so, the three-judge panel has protected our voting rights and the rights of over 173,000 Wisconsinites who want to participate in senate election.

C. Besides the 14th Amendment violation, the

'83 plan is also a violation of the state constitution.

The legislature does have the authority to apportionment the state legislature; however, the state constitution makes it clear that the redistricting must take place the "...firstsession after each enumeration made by the authority of the United States...." As the '83 plan was not enacted the first session after the federal census, it is unconstitutional by state as well as federal standards.

CONCLUSION

For the foregoing reasons, this Court should not summarily reverse the lower court's decision. In addition, it should affirm the lower court.

APPENDIX A

ORDER AND DECISION OF U.S. DISTRICT COURT EASTERN DISTRICT OF WISCONSIN DENYING REX AND DEBORAH REED INTERVENOR STATUS

The three-judge court denied Rex and Deborah Reed motion to intervene in their May 7, 1984, DECISION and ORDER. This appendix quotes from the last paragraph of that order:

> In response to our decision and order of February 10, 1984, one intervention request has been received. Rex R. Reed and Deborah L. Reed have moved to intervene in order to assert their claims that they, and other registered voters of the City of Fitchburg, will be denied their rights should Act 29 of the 1983 Wisconsin Acts be allowed to continue in force. The motion for intervention is denied. We will, however, consider the brief filed by Mr. Reed as an amicus submission to the Court.